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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/711,577	11/13/2000	John Calce	VIZR.10001NP	7169
10027	7590	08/25/2006	EXAMINER	
ANDERSON, LEVINE & LINTEL L.L.P.			ALPERT, JAMES M	
14785 PRESTON ROAD			ART UNIT	
SUITE 650			PAPER NUMBER	
DALLAS, TX 75254			3693	

DATE MAILED: 08/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/711,577

Applicant(s)

CALCE ET AL.

Examiner

James Alpert

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-26 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The following communication is in response to Applicant's amendment filed on 06/09/2006.

Status of Claims

In the previous Office action, mailed 02/09/2006, Claims 21-25 were rejected under 35 U.S.C. 103 as being unpatentable over Gilbert, U.S Patent #604131, in view of Henderson et al, U.S. Patent Application Publication #20010014873. Claims 1-9,11-19,26 were rejected under 35 U.S.C. 103 as being unpatentable over Gilbert in view of Meyer et al, U.S. Patent #5933812. Additionally, Claims 10,20 were rejected as being unpatentable over Gilbert in view of Meyer, and further in view of Henderson.

In response Applicant currently amends Claims 1,11, and 26. Claims 2-3,7-8,11-13,17-18,21,24 have been previously presented, while Claims 4-6,9-10,14-16,19-20,22-23,25 are as originally submitted. Claims 1-26 are therefore currently pending.

Response to Arguments

The Examiner has cursorily reviewed Applicants' remarks and amendments. After due consideration, the Examiner has concluded that it is appropriate at the current stage of prosecution to issue a restriction requirement of the multiple inventions claimed in the application. MPEP §811 states:

37 CFR 1.142(a), second sentence states: "[i]f the distinctness and independence of the invention be clear, such requirement will be made before any action upon the merits; however, it may be made at any time before final action in the case at the discretion of the examiner." This means the examiner should make a proper requirement as early as possible in the prosecution, in the first action if possible, otherwise, as soon as the need for a proper requirement develops.

The need for restriction has developed as the prosecution of the application has revealed two overriding concepts, each involving different fundamental elements:

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retirement benefits for employees that earn income via gratuities or commissions,
and

retirement plans that are portable from employer to employer for a given employee.

These concepts are reflected in the groupings, detailed immediately below.

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

1. Claims 1-10,11-20, and 26, drawn to investment systems and methods (for tipped and commissioned employees), classified in class 705, subclasses 15,16,17,35,36R
2. Claims 21-23, and 24-25 drawn to methods of investing money, classified in class 705, subclasses 36R.

The inventions are distinct, each from the other in that Inventions 1 and 2 are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct if they do not overlap in scope and are not obvious variants, and if it is shown that at least one subcombination is separately usable.

In the instant case, subcombination 1 has separate utility such as:

calculating settlement amounts for payment to employees according to the information regarding sales and credit/debit gratuities and predefine preferences for withholding investment;

Subcombination 2 also has separate utility such as:

any employee can switch to a new current employer from a set of employers and continue to invest into an employee's investment account a new current employer,

or

upon movement of an employee from a first employer to a second employer, associating an investment account with said employee upon movement to the second employer.

Because these inventions are distinct for being separately usable, as shown above, examining the inventions together may require additional searching in order to find the unique element(s) of each invention that are not found in the other invention. Although the Examiner has previously examined the inventions together, the possibility exists that new art may be applied. Additional multiple searches may be required, and thus the restriction for examination purposes, as indicated, is proper.

Reminders

No telephone communication was placed regarding this election due to the complex nature of this application and election. See MPEP §812.01.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. Applicant is reminded that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement is traversed. Please see 37 CFR 1.143.

Applicant is reminded that a shortened statutory period for response to this action is set to expire 30 (thirty) days from the mail date of this letter. Failure to respond within

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the period for response will result in abandonment of the application. See 35 U.S.C 133, MPEP §'s 710.02, 710.02(b).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Alpert whose telephone number is (571) 272-6738. The examiner can normally be reached on M-F 9:30-6:00. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Trammel can be reached on (571) 272-6712. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

James M. Alpert
August 17, 2006


ELLA COLBERT
PRIMARY EXAMINER